

OPEN MEETING ITEM



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COMMISSIONERS
MIKE GLEASON - Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
KRISTIN K. MAYES
GARY PIERCE



ARIZONA CORPORATION COMMISSION

22

ORIGINAL

DATE: MAY 19, 2008
DOCKET NO: W-02386A-08-0129
TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Belinda Martin. The recommendation has been filed in the form of an Opinion and Order on:

SUN LEISURE ESTATES UTILITIES COMPANY, INC.
(EMERGENCY RATES)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

MAY 28, 2008

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

JUNE 3, 2008 and JUNE 4, 2008

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250. For information about the Open Meeting, contact the Executive Secretary's Office at (602) 542-3931.

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

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1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 MIKE GLEASON - Chairman
4 WILLIAM A. MUNDELL
5 JEFF HATCH-MILLER
6 KRISTIN K. MAYES
7 GARY PIERCE

8 IN THE MATTER OF THE APPLICATION OF
9 SUN LEISURE ESTATES UTILITIES COMPANY,
10 INC. FOR AN EMERGENCY SURCHARGE.

DOCKET NO. W-02386A-08-0129

DECISION NO. _____

11 **OPINION AND ORDER**

12 DATE OF HEARING:

April 7, 2008

13 PLACE OF HEARING:

Phoenix, Arizona

14 ADMINISTRATIVE LAW JUDGE:

Belinda A. Martin

15 APPEARANCES:

16 Mr. Wade Noble and Mr. Jason Moyes, Noble
17 Law Offices, on behalf of Sun Leisure Estates
18 Utilities Company, Inc.; and

19 Mr. Kevin Torrey and Ms. Nancy Scott, Staff
20 Attorneys, Legal Division, on behalf of the
21 Utilities Division of the Arizona Corporation
22 Commission.

23 **BY THE COMMISSION:**

24 **PROCEDURAL HISTORY**

25 On March 5, 2008, Sun Leisure Estates Utilities Company, Inc. ("Sun Leisure" or
26 "Company"), filed with the Arizona Corporation Commission ("Commission") an application
27 requesting an emergency surcharge of approximately \$450 per customer in order to drill a new well
28 and install a new pump to back up and secure the water supply ("Application").

On March 14, 2008, a Procedural Order was issued setting a hearing in this matter for April 7,
2008. The Company provided notice of the hearing to its customers as required by the Procedural
Order.

On March 18, 2008, the Commission's Utilities Division Staff ("Staff") filed a Request for a
Procedural Conference seeking a determination of whether an administrative stay of the proceedings

1 was necessary.

2 A Procedural Conference was held on March 25, 2008, at which it was determined that an
3 administrative stay of the April 7, 2008, hearing was not necessary and the hearing would continue as
4 scheduled.

5 On April 1, 2008, Staff filed its Staff Report, recommending denial of the Application.

6 A hearing on the Application was held on April 7, 2008, before a duly authorized
7 Administrative Law Judge at the Commission's Phoenix office. The Company and Staff appeared
8 with counsel. None of the Company's customers appeared to make public comment. After public
9 hearing, the matter was taken under advisement pending submission of a recommended Opinion and
10 Order to the Commission.

11 On April 7, 2008, Staff filed its late-filed exhibits.

12 On April 10, 2008, the Company filed its Comments on Staff Report Dated April 1, 2008.

13 DISCUSSION

14 In Decision No. 52398 (August 21, 1981), the Commission granted Sun Leisure its Certificate
15 of Convenience and Necessity ("CC&N") to provide water service in an unincorporated portion of
16 Yuma County near the City of Yuma, Arizona.¹ At that time, the Company was a non-profit
17 corporation organized and existing under the laws of the State of Arizona. Sun Leisure currently
18 provides water service to 57 customers in the 55-and-over retirement community.

19 On January 22, 1990, Sun Leisure sought a permanent rate increase and, on September 19,
20 1990, the Commission granted the request pursuant to the terms of Decision No. 57078. In that
21 Decision, the Commission ordered that the Company should make certain listed improvements as the
22 revenues to do so became available. One of the improvements was that the Company should increase
23 its pressure tank capacity from 1,000 gallons to 2,500 gallons. The estimated cost at that time for this
24 improvement was \$2,000 to \$2,500. (*Decision No. 57078, pages 4 and 6.*)

25 Also in 1990, however, an earthquake caused either a shift of gravel pack material or a crack
26 in the casing of Sun Leisure's well at a level where sand is found. As a result, the well began
27

28 ¹ Sun Leisure is owned by the members of the Sun Leisure Estates Homeowner's Association, Inc., also an Arizona non-profit corporation, which is comprised of the lot owners in the Sun Leisure Estates Subdivision.

1 producing water with sand in it. Over the course of the next 10 years, Sun Leisure engaged a
2 company three times to clean sand from the storage tank and pressure tank.

3 In November 1999, Sun Leisure began experiencing more severe problems with sand in the
4 system and with the failure of the pump as well, causing the pump to have to be replaced three times
5 over the course of 18 months. The Company was concerned that the well could fail, leaving the
6 customers without a water source. As a result, the Company filed an application for an emergency
7 surcharge of \$382 per customer to pay for the costs of constructing a backup well.

8 In Decision No. 62622 (June 9, 2000), the Commission found that an emergency existed and
9 granted the application. In lieu of having each customer pay \$382 up front, the Commission ordered
10 that the surcharge be split over 12 monthly installments of \$31.83. (*Decision No. 62622, page 6.*) The
11 new well was constructed and the old well ultimately failed seven years later in 2007, once again
12 leaving Sun Leisure with just one well.

13 Although the new well has experienced no problems, the Company filed the instant
14 Application on March 5, 2008, over concerns with recent seismic activity in the area. Sun Leisure is
15 seeking to forestall the possibility of issues with its current well like those that arose with the old
16 well. It asks for an emergency surcharge of \$450 per customer for the construction of a backup well.

17 After Sun Leisure filed its Application, Staff discovered that not only had the Company's
18 corporate status been revoked for failure to file Annual Reports with the Commission's Corporations
19 Division ("Corporations"), but also the Company's CC&N had been rescinded pursuant to Decision
20 No. 69179 (December 5, 2006) as a result of its failures. (*See Staff's Exhibit S-2 and Decision No.*
21 *69179.*) Because of questions regarding the Company's status, Staff requested a Procedural
22 Conference to determine whether a stay of proceedings was required while Sun Leisure corrected its
23 status.

24 During a Procedural Conference on March 25, 2008, Staff expressed numerous concerns over
25 the propriety of proceeding with the matter because Sun Leisure's corporate status had been
26 dissolved and there was no indication as to whether the current applicants had the authority to act on
27 behalf of the Company. Staff also pointed out that Arizona Revised Statute ("A.R.S.") § 40-281
28 prevents a company from constructing new facilities without a CC&N. Since the Company's CC&N

1 was rescinded in 2006, the Company could not move forward with construction of a new well
2 without reapplying for a new CC&N.

3 Counsel for Sun Leisure related that following the death of the Company's Statutory Agent in
4 2002, the Company failed to file annual reports with Corporations as required, resulting in the
5 revocation of the Company's corporate status on January 14, 2003. Counsel indicated that there have
6 been no changes to the ownership of the Company during the intervening years and it is now in the
7 process of re-establishing its corporate status.

8 In the Company's opinion, regardless of the January 14, 2003, Certificate of Dissolution from
9 Corporations stating that "[U]nder A.R.S. §§ 10-1422 and 10-11422, your corporation may apply to
10 the commission for reinstatement *within three years* after the effective date of this dissolution" (*Staff*
11 *Exhibit S-2, emphasis original*), under the current version of A.R.S. § 10-11422, Sun Leisure has six
12 years to have its corporate status reinstated.² The Company further argues that, once Corporations
13 reinstated the Company's status, Sun Leisure would continue operations as though its status had
14 never been rescinded, including that Sun Leisure's CC&N had not been revoked—regardless of
15 Decision No. 69179. Staff declined to venture an opinion on this issue pending further research.

16 Without reaching the issues raised by either party, the Administrative Law Judge noted that
17 pursuant to the Arizona Constitution, Article 15, Section 3, Sun Leisure is a public service
18 corporation and the Commission may set rates for public service corporations regardless of corporate
19 status. As such, and in the interests of expediency, the Administrative Law Judge denied an
20 administrative stay of proceedings leaving for later the questions regarding the Company's corporate
21 and CC&N status.

22 On April 1, 2008, Staff filed its Staff Report concluding that the Company's concerns did not
23 rise to the level of an emergency under Arizona law and recommended denial of Sun Leisure's
24 Application.

25 The hearing on this matter convened as scheduled on April 7, 2008. No members of the public
26 appeared for public comment.

27 _____
28 ² A.R.S. § 10-11422 was changed from three years to six years for reinstatement of a dissolved entity by Laws 2007, Ch. 110, § 3.

1 Mr. Charles Swysgood testified on behalf of Sun Leisure. Mr. Swysgood is currently the
2 president of the Board for Sun Leisure and has served in that capacity for approximately one and half
3 years. It is a volunteer position. He purchased a home in the community in 2002 and has lived there
4 year-round since 2004. Prior to moving to Yuma, Mr. Swysgood was a state legislator in Montana for
5 14 years and then served as a budget director for the State of Montana for four years. (*Transcript of*
6 *April 7, 2008, hearing, page 10, hereafter, "Tr., pg. ____."*)

7 Mr. Swysgood first testified about why the Company filed the instant Application. Prior to the
8 construction of the new well, there were issues with the old well that required water to be trucked in
9 for approximately one week while the old well was being repaired. This resulted in considerable
10 hardship for the customers and expense for the Company. The Company filed the instant Application
11 because of concerns from customers that after failure of the old well in 2007, similar issues could
12 arise with the new well. They wish to avoid the problems and inconvenience they associate with
13 having no backup well. The community, he noted, is a 55-and-older community. As before, many of
14 the residents are not able to carry buckets of water back and forth to their homes should they have to
15 rely on trucked in water. (*Tr., pg. 10-11.*) Further, there are no other cost effective means of
16 providing water to the community should the well fail. (*Tr., pg. 12.*)

17 Although Mr. Swysgood testified that Sun Leisure filed the Application in response to
18 concerns from its customers, he also testified that it was the Company's Board that first brought the
19 Board's concerns to its customers. (*Tr., pg. 13.*) In late 2007, the Company proposed that customers
20 pay approximately \$300 to \$350 each for the cost of the new well. About 38 of the 57 customers
21 agreed to the possible charge. (*Tr., pg. 13.*) At that time, Mr. Swysgood was not aware that the
22 Company had to gain Commission approval of the charges. (*Tr., pg. 15.*)

23 After the Company gathered more information about the actual construction of a well, it
24 found that the likely cost would be closer to \$450 per customer. In February 2008, Sun Leisure held
25 another meeting with the homeowners and related to them the revised estimated costs. In addition to
26 the meeting, at which approximately 38 members attended, Mr. Swysgood went to the homeowners
27 who did not attend the meeting and explained the situation to them. "[O]ut of the total signatures that
28 we got, there was 43 people that signed out of the 56 that signed that they wanted the well, three

1 abstentions, and seven people were not in the facility at that time or were absentee owners and didn't
2 respond." (*Tr.*, *pg. 14.*) Overall, the customers do not seemed opposed to the possible charges. (*Tr.*,
3 *pg. 19-20.*)

4 Mr. Swysgood stated that given the financial condition of the Company, it could not pay
5 \$25,000 to \$30,000 for the well. (*Tr.*, *pg. 15.*) Even if the Company doubled its current charges, Mr.
6 Swysgood estimated it would take three to five years for Sun Leisure to accumulate enough funds to
7 pay for the construction of a new well. (*Tr.*, *pg. 16-17.*)

8 Regarding Sun Leisure's corporate status, Mr. Swysgood testified that the Board was
9 surprised to learn that the Company's corporate status had been rescinded. (*Tr.*, *pg. 21.*) However,
10 during the time period between the issuance of the Certificate of Dissolution and the present, the
11 Company operated under the same procedures and charged the same rates as it had prior to the
12 dissolution. (*Tr.*, *pg. 22.*)

13 On cross-examination, Mr. Swysgood testified regarding Sun Leisure's financial status. He is
14 aware that the Company is not making money. When asked if he had reviewed a 2006 annual report
15 indicating that the Company had a net loss of \$5,000, he stated that he had not reviewed the report
16 and found that amount "hard to believe." (*Tr.*, *pg. 30.*) During his tenure, Mr. Swysgood reviewed the
17 monthly statements from Sun Leisure's management firm, Crites & Associates, but he does not
18 oversee the financial decisions for the Company. The day-to-day decisions for the Company are
19 handled by "whoever is around." (*Tr.*, *pg. 31-32.*)

20 When asked, "[w]ithout having reviewed the previous annual reports, how do you know what
21 the financial condition of the company is?", Mr. Swysgood responded, "[w]ell, I guess the bills are
22 being paid, there's some money in the savings account, and there's cash in the checking account, the
23 operating account. So if it wasn't kept up, I guess would have been told by the management company
24 that we have a problem somewhere." (*Tr.*, *pg. 33-34.*)

25 Mr. Swysgood stated that, to his knowledge, the Company did not submit any financial
26 records as evidence in support of the Application. The Company considered no other financing
27 options to obtain money to construct a well. (*Tr.*, *pg. 37.*) Further, other than the fact that the old well
28

1 failed and possibly there have been earthquakes in the area,³ there is no evidence that the current well
2 cannot operate on a long-term basis. He concluded, "...at this very moment we don't have an
3 emergency." (*Tr.*, pg. 35-36.) Sun Leisure called no other witnesses and submitted no exhibits.

4 Staff first called Mr. Jian Liu. Mr. Liu is a water engineer for Staff and he prepared the
5 Engineering Report that is attached to the Staff Report (*Staff's Exhibit S-1*) as Attachment A. Based
6 on information provided by the Company and the testimony of the Company's witness, Mr. Liu
7 determined that, unlike the situation faced by the Company in 2000, there is no indication that the
8 current well is in danger of failure. He also noted even though the Commission found there was an
9 emergency in the 2000 matter, the old well remained viable for another seven years before failing.
10 (*Tr.*, pg. 47-48.) Although Mr. Liu supports the Company's desire to construct a backup well, he
11 believes Sun Leisure's current situation does not constitute an emergency. (*Tr.*, pg. 45.)

12 The Company's current system has a 15,000 gallon storage tank and a 1,000 gallon storage
13 tank.⁴ Based on Arizona Department of Environmental Quality ("ADEQ") requirements determined
14 pursuant to Sun Leisure's 2006 Water Use Data Sheet, the Company should have minimum storage
15 capacity of 15,459 gallons. (*Tr.*, pg. 46.) Mr. Liu noted that he had requested compliance information
16 from ADEQ, but at the time of the hearing he had not received it. As such, he is unable to state
17 whether the Company currently is in compliance with ADEQ water quality standards. (*Tr.*, pg. 46.)
18 He did note that in prior annual reports, Sun Leisure did not provide water loss/sold percentage
19 information and recommends that the Company do so in the future. (*Tr.*, pg. 47.)

20 On cross-examination, Mr. Liu admitted that operating on one well is not ideal because the
21 potential for a disruption in service does exist. He is also aware that this is a 55-and-older community
22 and there are limited alternatives available to the Company if the well fails. (*Tr.*, pg. 49-50.) Mr. Liu
23 agrees that an earthquake can potentially cause problems for a water system, but cannot speak to the
24 Company's assertion that there have been recent earthquakes in the area. (*Tr.*, pg. 51.) Mr. Liu noted
25 that of the approximately 400 water systems regulated by the Commission, 10 percent of them
26

27 ³ The Company submitted no factual evidence for its assertion that there have been earthquakes in the area.

28 ⁴ (*Tr.*, pg. 55.) Given that the Company is still operating using a 1,000 gallon pressure tank, it appears that the installation of a 2,500 pressure tank as recommended in Decision No. 57078 never occurred.

1 operate using only one well. (*Tr.*, *pg.* 45.)

2 In Mr. Liu's opinion, based on the well's capacity and current number of customers, there is
3 sufficient water production to last at least 10 to 20 years. (*Tr.*, *pg.* 54.)

4 Staff next called Mr. Jeffrey Michlik. Mr. Michlik is a Public Utilities Analyst V for Staff. He
5 prepared the Staff Report in this matter with the assistance of Mr. Liu's Engineering Report. Mr.
6 Michlik confirmed that Sun Leisure's current rates are those imposed in 1990 under Decision No.
7 57078. (*Tr.*, *pg.* 58.)

8 Mr. Michlik first testified regarding the Company's corporate status. As of the date of the
9 hearing, the Corporations website still displayed Sun Leisure's corporate status as dissolved. He also
10 raised the issue of whether the Company could have its status reinstated given that more than three
11 years had passed since the Certificate of Dissolution's issuance, rejecting the Company's argument
12 that it had six years to apply for reinstatement. (*Tr.*, *pg.* 59 and *Exhibit S-2.*)

13 Mr. Michlik testified that Staff recommends denial of the Application. (*Tr.*, *pg.* 62.) He drew
14 a distinction between the Company's 2000 application and the current request. In that case, evidence
15 was introduced that there were, indeed, problems with that well that created a genuine concern that it
16 might fail leaving the customers without water service. However, it is Staff's position that this is not
17 the case in the instant matter. The Company presented no evidence indicating the new well is in
18 danger of failing. As such, there is no current emergency necessitating implementation of an
19 emergency surcharge. (*Tr.*, *pg.* 62-64.)

20 On cross-examination, Mr. Michlik reiterated that Staff is not opposed to the idea of the
21 Company having a backup well. (*Tr.*, *pg.* 65.) He also stated that it is possible that problems could
22 arise with the current well in the future. (*Tr.*, *pg.* 66.)

23 Staff did not consider recommending approval of the Application and implementing the
24 surcharge over a twelve-month period, as was done in the 2000 emergency surcharge case, since Staff
25 concluded that there is no emergency necessitating the imposition of the surcharge. In Staff's
26 opinion, the Company should file a request for a permanent rate increase instead. (*Tr.*, *pg.* 67-69.)
27 Based on the limited financial data acquired by Staff, Mr. Michlik believes it is probable that Staff
28 would recommend approval of such a request. It is also possible that the money necessary for another

1 well could be figured into the rates through the approval of a loan from the Water Infrastructure
2 Financing Authority ("WIFA"). Even if this current Application is approved, it would still be
3 necessary for Sun Leisure to file a rate increase application. (*Tr.*, pg. 70-71.)

4 At the conclusion of the hearing, the matter was taken under advisement pending the
5 submission of a Recommended Opinion and Order to the Commission.

6 On April 10, 2008, the Company filed its Comments on Staff Report Dated April 1, 2008 in
7 which it reiterated arguments that this Application has the support of the customers, who are fearful
8 of a repeat of the emergency which arose in 2000. The Company also renewed its argument that
9 reinstatement of its corporate status is permitted within six years of its dissolution. Once that
10 reinstatement is completed, Sun Leisure would continue corporate operations as though it had never
11 lost its status and it would retain its CC&N.

12 * * * * *

13 Having considered the entire record herein and being fully advised in the premises, the
14 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

15 **FINDINGS OF FACT**

16 1. On March 5, 2008, Sun Leisure filed with the Commission its Application requesting
17 an emergency surcharge of approximately \$450 per customer in order to drill a new well and install a
18 new pump to back up and secure the water supply.

19 2. On March 14, 2008, a Procedural Order was issued setting a hearing in this matter for
20 April 7, 2008.

21 3. On March 18, 2008, Staff filed a Request for a Procedural Conference. According to
22 Staff, the Company had been dissolved by the Commission's Corporations Division in 2003 and, as a
23 result, the Commission revoked the Company's Certificate of Convenience and Necessity in Decision
24 No. 69179 (December 5, 2006). Staff sought a determination of whether an administrative stay of the
25 proceedings was necessary.

26 4. On March 25, 2008, Staff filed documents supporting its request for a Procedural
27 Conference.

28 5. A Procedural Conference was held on March 25, 2008, at which it was determined

1 that an administrative stay of the April 7, 2008, hearing was not necessary and the hearing would
2 continue as scheduled.

3 6. On March 28, 2008, Sun Leisure filed an affidavit stating that Notice of Hearing was
4 either delivered or mailed to all the Company's customers. Delivery of the Notice of Hearing was
5 accomplished by posting it in the Community Clubhouse and signed by the customers. Those who
6 did not sign the Notice were sent a copy by U.S. Mail.

7 7. On April 1, 2008, Staff filed its Staff Report, recommending denial of the Application.

8 8. A hearing on the Application was held on April 7, 2008, at the Commission's Phoenix
9 office. Sun Leisure, represented by counsel, offered the testimony of Charles Swysgood, President of
10 the Company. Jeffrey Michlik and Jian Liu testified on behalf of Staff.

11 9. On April 7, 2008, Staff filed its Late-Filed Exhibits.

12 10. On April 10, 2008, the Company filed its Comments on Staff Report Dated April 1,
13 2008.

14 11. Sun Leisure is an Arizona Class 'E' utility engaged in the business of providing water
15 service to approximately 57 customers near the City of Yuma, Yuma County, Arizona.

16 12. The Commission granted Sun Leisure a Certificate of Convenience and Necessity
17 ("CC&N") in Decision No. 52398 (August 21, 1981).

18 13. The Company's current rates were set by Decision No. 57078 (September 19, 1990).

19 14. In 2000, the Company sought, and the Commission granted, an emergency surcharge
20 of \$382 per customer in order to pay for a new well. Sun Leisure presented sufficient evidence that
21 there were numerous problems with the well. The Company had unsuccessfully sought financing for
22 a new well before finally filing the emergency surcharge application. After hearing, the Commission
23 issued Decision 62622 (June 9, 2000) declaring that an emergency did indeed exist. The surcharge
24 was spread over 12 monthly installments. The new well was constructed and the old well remained
25 viable for another seven years after the declaration of an emergency.

26 **Corporate and CC&N Status**

27 15. On January 14, 2003, Corporations sent a Certificate of Dissolution to Sun Leisure
28 notifying the entity that its corporate status had been dissolved. The letter also stated that, pursuant to

1 A.R.S. § 10-11422, as in effect on that date, the Company could apply to have its status reinstated
2 within three years of the Certificate of Dissolution, January 14, 2006. The Company did not act
3 during that time frame and on December 5, 2006, the Commission revoked Sun Leisure's CC&N in
4 Decision No. 69179 (December 5, 2006).

5 16. At the Pre-Hearing Conference, the Company noted that A.R.S. § 10-11422 had been
6 revised to allow a company to file for reinstatement within six years of the date of the Certificate of
7 Dissolution. The Company argues once its status is reinstated, it is as though the dissolution had
8 never occurred and the Company's CC&N remains in effect.

9 17. At the time of the hearing, Sun Leisure's corporate status had not been reinstated.

10 18. Staff recommends that Sun Leisure should file with Docket Control within 30 days of
11 the effective date of this Decision, as a compliance item in this docket, evidence of the Company's
12 active corporate status. Staff's recommendation is reasonable and shall be adopted.

13 19. We disagree with the Company's assertion that reinstatement of its corporate status
14 would have the effect of reinstating its CC&N. Perhaps if the Company had restored its status before
15 the Commission issued its Decision revoking the CC&N, it would have a stronger argument. But Sun
16 Leisure's CC&N has been revoked by Order of the Commission. As such, the Company must now
17 apply to obtain a CC&N. We agree with Staff that A.R.S. § 40-281 requires the Company to have a
18 CC&N before Sun Leisure may construct new facilities.

19 20. We note that on April 8, 2008, the day after the hearing, the Company filed with the
20 Commission an application for a CC&N under Docket No. W-02386A-08-0189.

21 **Financial Status**

22 21. The Company's last rate increase was in 1990—approximately 18 years ago. Ten
23 years after that rate increase, in 2000, circumstances demanded that the Company file an application
24 for an emergency surcharge in order to build a new well. The Commission granted the application.

25 22. In the intervening time, Sun Leisure has not sought a rate increase.

26 23. Once again, the Company believes its financial circumstances necessitate the filing of
27 another emergency surcharge in order to build another well. However, the Company filed no exhibits
28 or financial information in support of this assertion, nor did it present any specific testimony about

1 Sun Leisure's financial status.

2 24. Staff questioned Mr. Swysgood about the financial status of the Company, but he
3 seemed surprised by Staff's assertion that the Company is operating at a substantial loss. His
4 testimony throughout the hearing demonstrated an alarming lack of knowledge by the Board
5 regarding the Company's financial well-being. However, we appreciate fully that the members of Sun
6 Leisure's Board are all volunteers and we have no doubt that their efforts on behalf of the Company
7 are greatly valued.

8 25. We also understand Sun Leisure's concern that if it relied solely on a rate increase to
9 raise funds for a new well, it would take a number of years before it would have sufficient funds for
10 construction. However, the Company does not appear to have considered other options for financing
11 construction of a new well, especially the possibility that it could receive a low-interest loan from
12 WIFA for such a project.

13 26. We order that within 120 days from the effective date of this Decision Sun Leisure
14 must file with Docket Control an application for a permanent rate increase based on a year-end 2007
15 Test Year. We encourage the Company to seek Staff's assistance in preparation of its rate application.

16 **Emergency Rates**

17 27. Because the Company does not have sufficient funds to construct a new well, it now
18 seeks an emergency surcharge to raise funds for the well's construction.

19 28. Arizona Attorney General Opinion No. 71-17 (May 27, 1971) allows that the
20 Commission may approve interim rates only upon a finding that an emergency exists. Interim rates,
21 or in this case a one-time surcharge, may be used "when sudden change brings hardship to a
22 company, when the company is insolvent, or when the condition of the company is such that its
23 ability to maintain service pending a formal rate determination is in serious doubt." We will review
24 these criteria one at a time. The Company has the burden of meeting one of the criteria in order for
25 the Commission to find an emergency exists and grant the Application.

26 29. The first justification for finding an emergency is "when a sudden change brings
27 hardship to a company." The only change in this case is the failure of the old well. However, it
28 should not have been a surprise to Sun Leisure that the well did, in fact, fail. The Company argues the

1 possibility that the new well could fail because of earthquakes in the area creates a new hardship for
2 the Company. However, the new well has not failed, nor did the Company present any evidence that
3 the there are any problems with it indicating that well is likely to fail any time soon. In fact, Staff
4 testified that the new well should remain viable for at least the next 10 to 20 years. Also, Staff
5 presented evidence that it is not uncommon for water companies to operate with one well. We find
6 that there has been no sudden change bringing a hardship to the Company.

7 30. The second possibility is when the Company is insolvent. Although Sun Leisure faces
8 some financial difficulties, it is not insolvent and it does not claim to be insolvent. Therefore, we
9 cannot find an emergency based on the Company's financial insolvency.

10 31. The final possibility is that Sun Leisure's condition is "such that its ability to maintain
11 service pending a formal rate determination is in serious doubt." Other than the Company's inability
12 to pay for the immediate construction of another well, it is currently able to meet its financial
13 obligations. Additionally, Sun Leisure is experiencing no problems providing water to its customers
14 and there are no problems with the current well. As a Class 'E' Utility, the Company should have a
15 rate application processed and ruled upon in a relatively short time frame. We believe, therefore, that
16 Sun Leisure's ability to maintain service during the pending rate application is not in serious doubt.

17 32. Finally, we note that Mr. Swysgood testified that there is not an emergency at this
18 point.

19 33. The Company has not met its burden of showing that an emergency exists under
20 Arizona law and we must accept Staff's recommendation and deny the Application.

21 34. While we appreciate the concerns and fears of the community regarding the lack of a
22 second well, we do not believe it is appropriate to impose a large lump sum surcharge on the
23 Company's customers to pay for a backup well. Rather, as suggested by Staff, a better means of
24 achieving the Company's goals would be through filing of a permanent rate increase application in
25 conjunction with a WIFA loan application to finance the costs of drilling the backup well.

26 CONCLUSIONS OF LAW

27 1. Sun Leisure is a public service corporation pursuant to Article XV of the Arizona
28 Constitution and ARS §§ 40-250 and 40-251.

2. The Commission has jurisdiction over Sun Leisure and the subject matter of the Application.

3. Notice of the Application and hearing was provided in accordance with the law.

4. Sun Leisure is not facing an emergency within the definition set forth in Attorney General Opinion No. 71-17.

5. The emergency rate surcharge as requested by Sun Leisure is not reasonable and should be not implemented.

6. The recommendations set forth in Findings of Fact Nos. 18, 27 and 33 are reasonable and should be adopted.

ORDER

IT IS THEREFORE ORDERED that Sun Leisure Estate Utilities Company Inc.'s application for an emergency surcharge of \$450 is denied.

IT IS FURTHER ORDERED that Sun Leisure Estates Utilities Company Inc. shall file an application for a permanent rate increase within 120 days of the effective date of this Decision, based on a year-end 2007 Test Year.

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IT IS FURTHER ORDERED THAT Sun Leisure Estates Utilities Company Inc. must file with Docket Control within 30 days of the effective date of this Decision, as a compliance item in this docket, evidence of the Company's active corporate status.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this ____ day of _____, 2008.

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

1 SERVICE LIST FOR: SUN LEISURE ESTATES UTILITIES COMPANY,
2 INC.
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